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May 31, 2022

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Re: *In re Pork Antitrust Litig.*, 0:18-CV-01776-JRT-HB

Dear Counsel:

We understand that class counsel permitted Defendants to exclude from their structured sales data production, sales data for four (4) categories of pork products sold to DAPs and other customers. We further understand that Clemens and Tyson produced their structured sales data for all of their pork products without such exclusions.

We ask that the remaining producer Defendants—Hormel, JBS, Seaboard, Smithfield, and Triumph—produce their sales data for the following four (4) categories of pork products for the reasons detailed:

1. Franks—hot dogs and various types of franks that include pork and non-pork meat.

DAPs purchased significant amounts of franks from Defendants and, as such, Defendants should produce their sales data for these products. While beef franks do not contain any pork, franks not advertised as beef franks contain pork. Indeed, when Class plaintiffs' counsel filed their suit, they stated that the prices of "hotdogs" were affected by the conspiracy, including "Ball Park Franks."

2. Multi-ingredient products—such as breakfast sandwiches, burritos, sausage tots, or sausage rolls.

DAPs purchased these pork-containing products from Defendants. The amount of sausage in breakfast sandwiches, burritos, sausage tots, sausage rolls, or other multi-ingredient products is substantial. Sales data for any multi-ingredient or further

May 31, 2022
Page 3

processed product with any amount of pork should be included so that DAP experts can determine the effect of the defendants' conduct on the prices of these products.

3. Offal/Variety Products—products removed from the carcass during the harvest and fabrication process, such as bones, fat, feet, headmeat, hearts, and other organs.

Offal products were purchased by some DAPs (including in significant volumes by Nestlé Purina PetCare Company, more fully discussed below). Further, according to Defendant witnesses, offal made up the bulk of Defendants' exports to China. "Offal" sales are relevant since offal was the "majority" of Defendants' sales for export to China (for human consumption) as Thamodaran of Smithfield testified. (Tr. 77-78; 352-353). (*See also* Bollum Tr. 286-287: "Typically, the product that is exported to China from the U.S. is offal items..."). Our experts need all internal sales and export sales data by Defendants. Export sales are a material part of this case. (*See, e.g.*, Conagra Brands' Amended Complaint, ECF 1312, at ¶ 118: "Sending production overseas is another way in which each of the Producer Defendants were able to reduce the supply available to U.S. markets, thereby driving up prices. Notably, a 2017 analysis found that for every \$1 million of pork exported out of the U.S., the live value in U.S. hogs climbs by 20 cents per cwt. In other words, selling pork on the global market added \$50.20 to the market price of hogs.")

4. Renderings/Byproducts—products not used for human consumption (except lard), which are cooked for industrial/feed use, like blood meal, bone meal, and grease.

Renderings/byproducts were purchased in substantial quantities by at least one DAP. Nestlé Purina PetCare Company's Second Amended Complaint [ECF 1316 at FN 2], provides that the relevant pork products in this case include, "but is not limited to" rendering/byproduct such as "offal and individual parts or organs from pigs used in pet foods [*e.g.*, livers, kidneys, lungs, hearts, cheeks] and/or rendered products [*e.g.*, meat meals and bone meals]." Renderings/byproducts represent a discrete and significant category of pork sales by Defendants. (*See, e.g.*, CLMNS-00000307389: noting that "[o]ffal and rendering have been major contributions to our profitability"). Mr. Schmerbeck testified that rendering products made up 10-20% of the pork pounds sold per year by Clemens. (Tr. 220-221). Defendants tracked their rendering sales and profits, and specifically relied on Agri Stats to do so. For example, Clemens used Agri Stats data on rendering sales and prices to impose a significant price increase on Nestle Purina in March 2017 (CLMNS-0000058967).

Please confirm that Hormel, JBS, Seaboard, Smithfield, and Triumph will promptly produce their structured sales data for these pork products.

May 31, 2022
Page 4

Regards,



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